

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Newark Vicinage**

RAY ALLEN LUENSE, PAMELA PEARSON,)
DANIEL F. SETTNEK and NEIL ROSE,)
Individually and as representatives of a class of)
participants and beneficiaries on behalf of the)
Konica Minolta 401(k) Plan,)
Plaintiffs,)
v.) CIV. NO.: 2:20-cv-06827 (JMV- MF)
KONICA MINOLTA BUSINESS SOLUTIONS)
U.S.A., INC., BOARD OF DIRECTORS OF)
KONICA MINOLTA BUSINESS SOLUTIONS)
U.S.A., INC., KONICA MINOLTA 401(K))
PLAN COMMITTEE, SANDRA SOHL, SUSAN)
MCCARTHY, and JOHN DOES 1-30,)
Defendants.)

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
LEAVE TO FILE SUPPLEMENTAL AUTHORITY**

Having already filed (without seeking leave of this Court) two notices of supplemental authorities regarding three different district court decisions, Dkt. Nos. 40 (“First Notice”), 43 (“Second Notice”), Plaintiffs now seek leave to file a third notice of supplemental authorities regarding two more district court decisions. Dkt No. 46. Plaintiffs cite no authority in support of their position that they are entitled to file a notice of supplemental authority, accompanied by new briefing, every time a court issues a decision that is brought under the same statute. That is because “at some point, briefing must end.” *Archdiocese of Milwaukee v. Underwriters at Lloyd's, London*, 955 F. Supp. 1066, 1070 (E.D. Wis. 1997). See also *United States v. Williams*, 136 F.3d 547, 554 (8th Cir. 1998) (rejecting request to allow further supplemental briefing because “[a]t some point briefing and argument must end and the appeal must be decided.

Williams passed this point long ago.”); *Nichols v. Harris*, 17 F. Supp. 3d 989, 996 and n.3 (C.D. Cal. 2014) (holding that where the plaintiff “filed five separate Notices of Supplemental Authority, each of which included a supplemental brief,” that it “would be proper to strike Plaintiff’s supplemental briefs,” but instead “exercis[ing] . . . discretion” to consider the issue “moot” given that the “repetitive arguments . . . did not affect the outcome of the Court’s recommendation”).

The additional decisions Plaintiffs cite add nothing new for this Court to consider. The parties have already extensively briefed the Article III standing issue discussed in *McGowan v. Barnabas Health, Inc.* See *McGowan*, No. 20-13119, 2021 WL 1399870, at *3-4 (D.N.J. Apr. 13, 2021); Dkt. No. 42 (“First Response”); Dkt. No. 45 (“Second Response”) at 5-6. And, like the decisions Plaintiffs submitted in their Second Notice, *McGowan* and *Peterson v. Insurance Services Office, Inc.* involved allegations regarding the prudence and loyalty of investment decisions that are not at issue here – including specific allegations that the lowest-cost share classes were not used for particular investments. See *McGowan*, 2021 WL 1399870, at *2 (“The Complaint points to more than a dozen investments by the Plans for which a lower-cost share class was available.”); see also *Peterson*, No. 20-13223, 2021 WL 1382168, at *4 (D.N.J. Apr. 13, 2021); Second Response at 3. So too, both *McGowan* and *Peterson* – like the decisions Plaintiffs submitted in their Second Notice – involved allegations that the plans paid approximately three times as much for recordkeeping services than those services were worth. See *Peterson*, 2021 WL 1382168, at *4; *McGowan*, No. 20-13119, Dkt. No. 1, ¶¶ 107-109; Second Response at 4.

Plaintiffs’ Motion for Leave to File Supplemental Authority, Dkt. No. 46, should be denied, and Defendants’ Motion to Dismiss, Dkt. No. 23, should be granted.

Dated: May 5, 2021

Respectfully submitted,

/s/ Philip W. Crawford

Philip W. Crawford
(Attorney ID #023431980)
GIBBONS, P.C.
One Gateway Center
Newark, NJ 07102-5310
Telephone: (973) 596-4803
E-mail: pcrawford@gibbonslaw.com

/s/ Lars C. Golumbic

Lars C. Golumbic (admitted *pro hac vice*)
Edward J. Meehan (admitted *pro hac vice*)
William J. Delany (Attorney ID # 049031994)
Samuel I. Levin (admitted *pro hac vice*)
Elizabeth L. Woods (admitted *pro hac vice*)
GROOM LAW GROUP, CHARTERED
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006-5811
Tel: (202) 857-0620
E-mail: lgolumbic@groom.com
emeahan@groom.com
wdelany@groom.com
slevin@groom.com
ewoods@groom.com